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February 2, 2011

BY HAND DELIVERY

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC 105
12100 Park 35 Circle, Building F
Austin, Texas 78753

Ms. Sarah Shadburne
c/o LS Power Development, LLC
Two Power Center, 11th Floor
East Brunswick, New Jersey 08816

**Re: Appeal of Executive Director's Use Determination for Application 13256
Sandy Creek Power Generation Facility
Rattlesnake Road
Riesel, McLennan County, Texas**

Dear Ms. Castañuela and Ms. Shadburne:

This Firm represents Sandy Creek Power Generation Facility/ Sandy Creek Energy Associates, L.P et al. ("SCEA") in connection with the captioned Application. My address and daytime telephone number are included in the letterhead above. Please consider this letter an appeal of Executive Director's "negative use determination" for Application 13256 for the Sandy Creek Power Generation Facility ("Sandy Creek"), pursuant to the appeal procedure outlined in 30 Texas Administrative Code § 17.25. We are filing this appeal on behalf of SCEA, the entity to which the use determination was issued. The contact information for SCEA is Sarah Shadburne, c/o LS Power Development, LLC, Two Power Center, 11th Floor, East Brunswick, NJ 08816. Ms. Shadburne's telephone number is 212-287-0573.

Background. Sandy Creek requires an estimated 8,788 gallons of process water per minute, or 12,654,720 gallons per day. A Raw Water Pre-treatment System (the "Reclaimed Water System") allows Sandy Creek to reuse wastewater obtained from the Waco Metropolitan Area Regional Sewage System, instead of sourcing new water through pumping of local groundwater or diversion of surface water. The Reclaimed Water System was installed to meet or exceed regulatory requirements, including , without limitation, requirements found at Texas Water Code § 11.1271, 30 Texas

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Administrative Code § 288.3, 30 Texas Administrative Code § 288.7, and the Amendment to the City of Waco's Certificate of Adjudication (Certificate No. 12-23115C) ("Amended Certificate").

On February 17, 2009, a use determination application for the pollution control property tax exemption authorized by Texas Tax Code § 11.31 was filed for the Reclaimed Water System at Sandy Creek. In January 2011, the Executive Director issued a short "negative use determination" for the Reclaimed Water System.

Present appeal. SCEA hereby requests Commission consideration of the use determination for Application 13256. The letter from the Executive Director describing the basis for his "negative use determination" for Application 13256 is attached hereto as **Exhibit A** (hereinafter referred to as the "Letter").¹ In a decision spanning just one paragraph, the Executive Director summarily concluded that SCEA did not "cite an applicable environmental regulation being met or exceeded" by the Reclaimed Water System. To the contrary, SCEA identified multiple applicable environmental regulations including, without limitation, the water conservation requirements in Texas Water Code § 11.1271, 30 Texas Administrative Code § 288.3, 30 Texas Administrative Code § 288.7, and the Amended Certificate. The Letter addresses 30 Texas Administrative Code § 288.7 and Texas Water Code § 11.1272 (a section not relied upon by SCEA), and does so in cursory fashion. Indeed, the Letter includes no case law citation or other law to support its pronouncement that environmental regulations cited by SCEA are unsatisfactory. The Letter demonstrates that the Executive Director did not properly consider the record in reaching his decision. Accordingly, the Executive Director's "negative use determination" has no basis in fact or Texas law.


Moreover, even the single paragraph in the Letter dedicated to the "negative use determination" is fraught with clear error. By way of example only, the Letter indicates that "Texas Water Code, § 11.1272 . . . require[s] wholesale and retail public water suppliers to develop a water conservation plan." This is an incorrect statement of Texas law. In reality, Texas Water Code § 11.1272 states that TCEQ shall, by rule, require certain wholesale and retail public water suppliers and irrigation districts to develop *drought contingency plans*. There are essential differences between drought contingency plans and water conservation plans, and it not clear whether the Executive Director considered the proper portion of the Texas Water Code. The failure to discern

¹ Although the letter describing the use determination was dated January 10, 2011, the envelope on which it was sent was postmarked January 21, 2011 (see attached) and was not received until January 24, 2011. Appeals from use determinations must be filed with the Chief Clerk of the Commission within 20 days after the receipt of the Executive Director's determination, and a person is presumed to have been notified on the third regular business day after the date the notice of the Executive Director's action is mailed by first class mail. Accordingly, we are filing this appeal today in an abundance of caution. 30 TEX. ADMIN. CODE § 17.25(b). However, we are prepared to provide evidence of the date of receipt by Sandy Creek as and to the extent necessary. Further, evidence of SCEA's authorization for our Firm to file this appeal is attached as an exhibit hereto

between the two demonstrate that the "negative use determination" in the Letter is arbitrary, capricious, and represents an abuse of discretion.

Conclusion. We submit this appeal pursuant to 30 Texas Administrative Code § 17.25 on behalf of Sandy Creek in reference to the Executive Director's use determination for Application 13256. The Executive Director's failure to properly consider Texas law along with SCEA's application and other information identifying the environmental regulations being met or exceeded by the Reclaimed Water System should result in remand. The arguments set forth herein are not intended to be exclusive and SCEA does not waive its right to raise other arguments during this appeal. Accordingly, request is hereby made for a briefing schedule in connection with this matter.

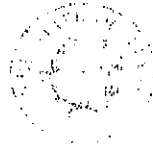
Respectfully submitted,


Gerald J. Pels *by permission CAC*

For the Firm

EXHIBIT A

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinslein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 10, 2011

Ms. Amy Jolley
Sandy Creek Energy Associates, L.P. et al.
1000 Louisiana, Suite 5800
Houston, Texas 77002

Re: Negative Use Determination for Application 13256:
Sandy Creek Power Generation Facility
Rattlesnake Road
Riesel (McLennan County)

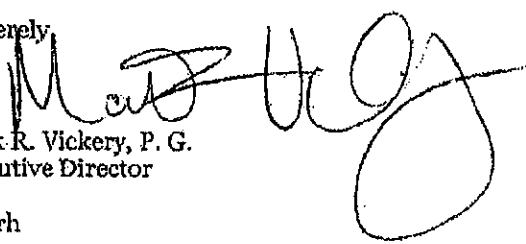
Dear Ms. Jolley:

The Texas Commission on Environmental Quality (TCEQ or commission) has completed the review for application 13256, received on February 20, 2009. A negative determination is issued for this application because the raw water pretreatment system is necessary for the generation of electricity. Texas Water Code, §11.1272 and Title 30 Texas Administrative Code (TAC) §288.7 require wholesale and retail public water suppliers to develop a water conservation plan. While water conservation plans must include five-year and ten-year targets for water savings, failure to meet those targets does not subject the planning entity to enforcement. A water conservation plan may include the use of state-of-the-art equipment and/or process modifications to improve water use efficiency, but the installation of such equipment is not mandated by federal, state, or local regulations. As such, Sandy Creek has failed to cite an applicable environmental regulation being met or exceeded by the installation of the Raw Water Pretreatment System.

If you wish to appeal this determination, the appeal process can be found at 30 TAC §17.25. Pursuant to §17.25(a)(1), an appeal must be filed with the chief clerk of the commission within 20 days of receipt of this letter.

If you have any questions or require additional information, please contact Ron Hatlett with the Tax Relief for Pollution Control Property Program at the letterhead address, Mail Code 110, by telephone at (512) 239-6348, or by e-mail at rhatlett@tceq.state.tx.us.

Sincerely,


Mark R. Vickery, P. G.
Executive Director

MV/rh

cc: Chief Appraiser, McLennan County Appraisal District, P. O. Box 2297, Waco, Texas
76703

February 2, 2011

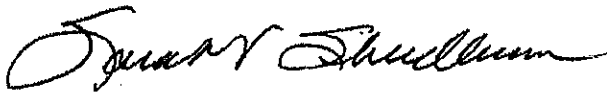
La Donna Castanuela, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC 105
12100 Park 35 Circle, Building F
Austin, Texas 78753

RE: Attorney Authorization
Sandy Creek Power Generation Facility
Sandy Creek Energy Associates, L.P., Et Al

Dear Ms. Castanuela:

This letter serves to inform you that Sandy Creek Energy Associates, L.P., et al hereby grants power of attorney to Gerald J. Pels of Locke Lord Bissell & Liddell. As such, Mr. Pels shall be entitled to receive, discuss, and represent Sandy Creek Energy Associates, L.P., et al in any and all Texas Commission on Environmental Quality ("TCEQ") matters with you and other members of the staff of the TCEQ. Such consent is granted effective immediately and shall remain in effect until such time Sandy Creek Energy Associates, L.P., et al provides written notification of revocation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sarah Shadburne".

Sarah Shadburne
Vice President - Tax

Cc: Gerald J. Pels

February 2, 2011

Mr. Gerald J. Pels
Locke Lord Bissell & Liddell LLP
600 Travis Street, Suite 2400
Houston, Texas 77002

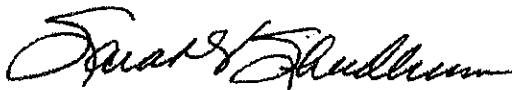
Re: Appeal of Executive Director's Use Determination for Application 13256
Sandy Creek Power Generation Facility
Rattlesnake Road
Riesel, McLennan County, Texas

Dear Gerry:

Please allow this correspondence to constitute our direction for you to represent Sandy Creek Power Generation Facility/Sandy Creek Energy Associate, et al. and file the appeal in connection with the above-captioned matter.

Please call me should you have any questions.

Sincerely,



Sarah Shadburne
Vice President – Tax
LS POWER DEVELOPMENT, LLC
Two Tower Center 11th Floor
East Brunswick, NJ 08816

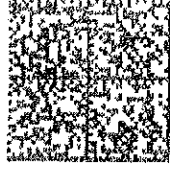


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Austin, Texas 78711-3087

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RETURN SERVICE REQUESTED



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02 1M 0004264845 JAN 21 2011
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SANDY CREEK ENERGY ASSOCIATES LP
ET AL
AMY JOLLEY
1000 LOUISIANA, #5800
HOUSTON TX 77002

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